

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK, NEW JERSEY

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DAVID P. TARINO,

Docket No.: 07 CV 5505(JAG)(MCA)

Plaintiff,

**ANSWER**

-against-

LOS ANGELES AIRPORT MARRIOTT HOTEL,

Defendant.

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Defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL, by its attorneys, GARBARINI & SCHER, P.C., as and for its Answer to plaintiff's Complaint, upon information and belief, states as follows:

FIRST: Denies each and every allegation contained in paragraphs designated "1", "2" and "3 of the complaint.

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**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

SECOND: If any damages were sustained at the time and place and in the manner alleged in the complaint, such injuries and damages are attributable in whole or in or in part, to the comparative negligence of the plaintiff.

THIRD: If any damages are recoverable against said defendant, the amount of such damages shall be diminished in the proportion which the comparative negligence attributable to the plaintiff bears to the comparative negligence, if any, of said defendant. Further, if plaintiff's comparative negligence exceeds the negligence, if any, of the defendant, plaintiff is/are barred from recovery.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

FOURTH: Pursuant to the F.R.C.P. and the Rules governing the Courts of the State of New Jersey, the defendant objects to the jurisdiction of this action designated in the United States District Court for the District of New Jersey, Newark, New Jersey, on the ground that this is not the proper venue. Defendant, pursuant to the rules governing the Courts of the State of New Jersey, further demands that the place of trial herein be changed to the United States District Court for the District of Southern California.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

FIFTH: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source pursuant to the applicable provisions of the New Jersey statutes.

SIXTH: If any damages are recoverable against this said answering defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

SEVENTH: Upon information and belief, this Court did not acquire jurisdiction over the defendant herein, in that said defendant was not legally served with process and consequently the Court lacks jurisdiction over the person and property of this answering defendant according to New Jersey Court Rules.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

EIGHTH: That the complaint fails to state facts sufficient to constitute a legal cause of action against answering defendant.

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**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

NINTH: If the answering defendant is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and therefore this answering defendant's liability shall be limited to its equitable share, pursuant to the Rules of the State of New Jersey.

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**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

TENTH: The answering defendant is entitled to a set-off pursuant to the Court Rules of the State of New Jersey.

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**JURY DEMAND**

ELEVENTH: Defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL, hereby demands a trial by Jury with respect to all issues raised herein.

**TRIAL COUNSEL DESIGNATION**

TWELFTH: Defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL, hereby designates KURT LEE WEINMANN as its trial counsel with respect to this matter.

WHEREFORE, defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL, demands judgment dismissing the Complaint, or in the alternative, demands that the liability of the defendant, if any, be determined as and between themselves and the damages, if any, be apportioned, together with the costs and disbursements of this action.

Dated: Hackensack, NJ  
November 28, 2007

Yours, etc.

GARBARINI & SCHER, P.C.

By:                     /s/                      
WILLIAM G. SCHER (WS 2891)  
Attorneys for Defendant  
MARRIOTT INTERNATIONAL, INC.  
s/h/i/a LOS ANGELES AIRPORT  
MARRIOTT HOTEL  
Court Plaza North  
25 Main Street, Suite 600  
Hackensack, NJ 07601-7025

TO:

DAVID P. TARINO  
Plaintiff *Pro Se*  
366 Sutton Avenue  
Hackensack, NJ 07601  
(201) 487-2389

## CERTIFICATION OF COUNSEL

I hereby certify to the best of my knowledge and belief that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and that no other action or arbitration proceeding is contemplated. I am unaware of any other party who should be joined in this action.

Dated: Hackensack, NJ  
November 28, 2007

Yours, etc.

GARBARINI &amp; SCHER, P. C.

By: /s/  
WILLIAM G. SCHER (WS 2891)  
Attorneys for Defendant  
MARRIOTT INTERNATIONAL, INC.,  
s/h/i/a LOS ANGELES AIRPORT  
MARRIOTT HOTEL  
Court Plaza North  
25 Main Street, Suite 600  
Hackensack, NJ 07601-7025  
(201) 343-2002

**CERTIFICATION**

I hereby certify that I today caused the within Answer to be filed with the United States District Court for the District of New Jersey, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101 by Electronic Case Filing.

I further certify that I today caused a copy of the within pleading to be served via first class mail upon DAVID P. TARINO, Plaintiff *Pro Se*, 366 Sutton Avenue, Hackensack, NJ 07601

Dated: Hackensack, NJ  
November 28, 2007

Yours, etc.

GARBARINI & SCHER, P. C.

By:                     /s/                      
WILLIAM G. SCHER (WS 2891)  
Attorneys for Defendant  
MARRIOTT INTERNATIONAL, INC.,  
s/h/i/a LOS ANGELES AIRPORT  
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